

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.2 OF 2005

Anirudh Kanayalal Tiwari & Anr. .. Appellant

Versus

The Municipal Corporation of

Greater Bombay and Ors. .. Respondents

Mr.R.A.Thorat i/b. B.P.Shukla for appellant
Mr.A.C.Tamhane i/b. M/s.Tamhane & Co. for
respondent No.3.
Mr.Xavier for Municipal Corporation.

CORAM : **S.C.DHARMADHIKARI, J.**
DATE : **Vacation Judge.**
JANUARY 4, 2005.

P.C.

. This Appeal from Order impugns the order dated 24th December 2004 passed by the learned Judge of City Civil Court in Notice of Motion No.5381 of 2004 in L.C. Suit No.6026 of 2004.

2. Appellants - original plaintiffs instituted the above suit for a declaration that he is entitled to permanent alternate accommodation in lieu of the suit premises admeasuring 30' x 50' situated at C.T.S. No.243, S.No.464, Chincholi Bunder Link Road, Malad (West), Mumbai 400 064. It also prays for a permanent injunction restraining respondent Nos. 2 and 3 (original defendant Nos. 2 and 3) from dispossessing them and/or demolishing the premises without providing permanent alternate accommodation to them.

3. In the aforesaid suit, notice of motion was taken out praying for an interim injunction in terms of prayer clause (b) of the plaint. An application for ad-interim injunction was made which was initially assigned to Court Room No.10. The learned Judge directed that the said matter should be posted before C.R.No.9, which is a

regular court and further directed that respondent Nos. 2 and 3 shall not demolish the structure which is more particularly mentioned in the order reproduced at page 8 of the appeal paper book. When the matter was posted before the regular court on 24th December 2004, it appears that no affidavit in reply was filed but the direction issued by learned Judge on 23rd Decemebr 2004 was not continued and ad-interim relief has been refused.

4. Mr.Thorat, learned Counsel appearing for appellants contends that when the court was satisfied on 23rd December 2004 about the existence of the structure, then, the direction not to demolish the same ought to have been continued till the hearing and final disposal of the notice of motion by the regular court. The learned Judge, therefore, erred in passing virtually final order on the notice of motion. The observations of the learned Judge that there

is no structure is contrary to the material placed on record. He invites my attention to the census certificate. In any event, Mr.Thorat submits that the learned Judge proceeds on the basis of locus of plaintiff No.2 and also scrutinises the documents including driving licence.

5. Mr.Tamhane on the other hand submits that the photographs would demonstrate that there is no structure at site and the claim of appellants that they are in possession of suit premises is false and bogus.

6. In my view, in the absence of any affidavit in reply setting out the version of the contesting defendants, the learned Judge should not have proceeded to straight away vacate the ad-interim injunction. In any event, the learned Judge could have safely, in the facts and circumstances, directed maintainance of status

quo by both sides till the hearing of the notice of motion.

7. In my view, observing anything more would prejudice the case of both sides on merits of the controversy. I, therefore, refrain myself from making any observations. In my view, interest of justice would be sub-served if parties are directed to maintain status quo as of today till the hearing and final disposal of the notice of motion and the hearing of motion is expedited.

8. Accordingly following order:-

a) The trial court to decide the Notice of Motion No.5381 of 2004 in L.C. Suit No.6026 of 2004 as expeditiously as possible and in any event within two months from today;

b) Till the motion is disposed of

parties to maintain status quo as of today. All contentions on merits are expressly kept open and the trial court to decide notice of motion uninfluenced by any observations in this order;

c) A.O. is disposed of accordingly.

8. It is clarified that this order will not prevent Corporation from initiating such steps as are permissible in law. All concerned to act on an authenticated copy of this order.
